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EXAMINER

NAUROT TON, JOAN

ART UNIT	PAPER NUMBER
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2109

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/670,549	Applicant(s) SHAH, RAHUL L.	
	Examiner Joan B. Naurot Ton	Art Unit 2109	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/24/06 and 4/11/2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 9, 10, 19, and 20 of 10/670549 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 9, 18, 28, and 37, respectively of copending Application No. 10/670849. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Regarding claim 9 of 10/670549 vs. claim 9 of 10/670849, claim 10 of 10/670549 vs. claim 18 of 10/670849, claim 19 of 10/670549 vs. claim 28 of 10/670849, and claim 20 of 10/670549 vs. claim 37 of 10/670849, the scope of the above respective claims is the same. The elements are merely presented in a different order. However, as nothing in either claim mandates a particular order, the examiner asserts that this presentation of elements does not create a patentable difference.

3. Claims 8 and 18 of 10/670549 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 12 and 26, respectively of copending

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Application No. 10/670550. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Regarding claim 8 of 10/670549 vs. claim 12 of 10/670550, and claim 18 of 10/670549 vs. claim 10/670550, the scope of the above respective claims is the same. The elements are merely presented in a different order. However, as nothing in either claim mandates a particular order, the examiner asserts that this presentation of elements does not create a patentable difference.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 9, 10, 19, 20, 29, and 30 of 10/670549 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11, 20, 30, 47, and 56 of copending Application No. 10/670849 in view of McDowell et al

(US publication number 2002/0035605, dated March 21, 2002). This is a provisional obviousness-type double patenting rejection.

Regarding claim 9 of 10/670549 vs. claim 1 of 10/670849:

Claim 1 of '0849 discloses the method steps comprising: receiving an instant messaging operation directed to a given user, wherein said given user is not offline; determining a presence state of said instant messenger in response to receiving said instant messaging operation; and selectively processing said instant messaging operation dependent upon said presence state in response to said determining. Claim 1 of 10/670849 teaches all the limitations of claim 9 of 10/670549 except that claim 9 of 10/670549 includes the method steps of storing and querying schedule information and assigning presence states when they are different.

The general concept of providing schedule information, storing it, and querying it, and assigning presence states is well known in the art as illustrated by McDowell (US publication 2002/0035605, dated March 21, 2002), hereinafter referred to as McDowell, who discloses providing schedule information in a presence detection method.

McDowell teaches the method steps of storing and querying schedule information and assigning presence states if they are different. In paragraph P13, paragraph 0135, line 8, McDowell states, that imported items into the Privacy database include "PIM contents, (i.e. calendar...)", thereby providing a place to store and use schedule information. McDowell also discloses that his system does "presence determination" as disclosed in his abstract, line 1, and discloses that message blocking is also possible for presence detection with "calendar programs", on P13, paragraph 0129, line 12.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 1 of 10/670849 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

Regarding claim 10 of 10/670549 vs. claim 11 of 10/670849:

Claim 11 of 10/670849 discloses the method steps comprising: storing an instant messaging operation associated with a given presence state of said instant messenger, wherein said given presence state corresponds to a given user; detecting a transition to said given presence state subsequent to said storing; and performing said instant messaging operation in response to said detecting. Claim 11 of 10/670849 teaches all the limitations of claim 10 of 10/670549 except that claim 10 of 10/670549 includes the method steps of storing and querying schedule information and assigning presence states when they are different.

The general concept of providing schedule information, storing it, and querying it, and assigning presence states is well known in the art as illustrated by McDowell (US publication 2002/0035605, dated March 21, 2002), hereinafter referred to as McDowell, who discloses providing schedule information in a presence detection method. McDowell teaches the method steps of storing and querying schedule information and assigning presence states if they are different. In paragraph P13, paragraph 0135, line 8, McDowell states, that imported items into the Privacy database include "PIM

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contents, (i.e. calendar...)", thereby providing a place to store and use schedule information. McDowell also discloses that his system does "presence determination" as disclosed in his abstract, line 1, and discloses that message blocking is also possible for presence detection with "calendar programs", on P13, paragraph 0129, line 12.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 11 of 10/670849 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

Regarding claim 19 of 10/670549 vs. claim 20 of 10/670849:

Claim 20 of 10/670849 discloses the computer-accessible medium wherein the program instructions are computer-executable to: receive an instant messaging operation directed to a given user, wherein said given user is not offline; determine a presence state of said instant messenger in response to receiving said instant messaging operation; and selectively process said instant messaging operation dependent upon said presence state in response to said determining. Claim 20 of 10/670849 discloses all the limitations of claim 19 of 10/670549 above except that claim 19 of 10/670549 includes the limitations of storing and querying schedule information and assigning presence states when they are different.

The general concept of providing schedule information, storing it, and querying it, and assigning presence states is well known in the art as illustrated by McDowell, who

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discloses providing schedule information in a presence detection method. McDowell teaches the method steps of storing and querying schedule information and assigning presence states if they are different. In paragraph P13, paragraph 0135, line 8, McDowell states, that imported items into the Privacy database include "PIM contents, (i.e. calendar...)", thereby providing a place to store and use schedule information. McDowell also discloses that his system does "presence determination" as disclosed in his abstract, line 1, and discloses that message blocking is also possible for presence detection with "calendar programs", on P13, paragraph 0129, line 12.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 20 of 10/670849 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

Regarding claim 20 of 10/670549 vs. claim 30 of 10/670849:

Claim 30 of 10/670849 discloses the computer-accessible medium, wherein the program instructions are further computer-executable to: store an instant messaging operation associated with a given presence state of said instant messenger, wherein said given presence state corresponds to a given user; detect a transition to said given presence state subsequent to said storing; and perform said instant messaging operation in response to said detecting. Claim 30 of 10/670849 discloses all the limitations of claim 20 of 10/670549 except that claim 20 includes the limitations of

storing and querying schedule information and assigning presence states when they are different.

The general concept of providing schedule information, storing it, and querying it, and assigning presence states is well known in the art as illustrated by McDowell, who discloses providing schedule information in a presence detection method. McDowell teaches the method steps of storing and querying schedule information and assigning presence states if they are different. In paragraph P13, paragraph 0135, line 8, McDowell states, that imported items into the Privacy database include "PIM contents, (i.e. calendar...)", thereby providing a place to store and use schedule information. McDowell also discloses that his system does "presence determination" as disclosed in his abstract, line 1, and discloses that message blocking is also possible for presence detection with "calendar programs", on P13, paragraph 0129, line 12.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 30 of 10/670849 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

Regarding claim 29 of 10/670549 vs. claim 47 of 10/670849:

Claim 47 of 10/670849 discloses the system wherein the instant messenger software module is further configured to: receive an instant messaging operation directed to a given user, wherein said given user is not offline; determine a presence

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state of said instant messenger software module in response to receiving said instant messaging operation; and selectively process said instant messaging operation dependent upon said presence state in response to said determining. Although the elements of the claims are presented in a different order, claim 47 of 10/670849 meets all the limitations of claim 29 of 10/670549 except that claim 29 of 10/670549 includes a calendar application software module.

The general concept of providing a calendar application software module is well known in the art as illustrated by McDowell, which discloses a schedule for availability in a presence detection method. McDowell teaches the use of a calendar application software module on P12 of the specification, Table 5, and in paragraph P13, paragraph 0135, line 8, where McDowell states, that imported items into the Privacy database include "PIM contents, (i.e. calendar...)", thereby providing a calendar application in his presence detection method and system.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 47 of 10/670849 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

Regarding claim 30 of 10/670549 vs. claim 56 of 10/670849:

Claim 56 of 10/670849 discloses the system, wherein said instant messenger software module is further configured to: store an instant messaging operation

associated with a given presence state of said instant messenger software module, wherein said given presence state corresponds to a given user; detect a transition to said given presence state subsequent to said storing; and perform said instant messaging operation in response to said detecting. Claim 56 of 10/670849 discloses all the limitations of claim 30 of 10/670549 above except that claim 30 of 10/670549 includes a calendar application software module.

The general concept of providing a calendar application software module is well known in the art as illustrated by McDowell, which discloses a schedule for availability in a presence detection method. McDowell teaches the use of a calendar application software module on P12 of the specification, Table 5, and in paragraph P13, paragraph 0135, line 8, where McDowell states, that imported items into the Privacy database include "PIM contents, (i.e. calendar...)", thereby providing a calendar application in his presence detection method and system.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 56 of 10/670849 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

6. Claims 8, 18 and 28 of 10/670549 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,

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15, and 40, respectively, of copending Application No. 10/670550 in view of McDowell.

This is a provisional obviousness-type double patenting rejection.

Regarding claim 8 of 10/670549 vs. claim 1 of 10/670550:

Claim 1 of 10/670550 discloses a method, comprising: detecting a computer system activity level indicative of computer system activity; determining whether said activity level exceeds an activity threshold in response to said detecting; and transitioning a presence state of said instant messenger to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user. Claim 1 of 10/670550 discloses all the limitations of claim 8 of 10/670549 above except that claim 8 of 10/670549 includes the limitations of storing and querying schedule information and detecting presence changes.

The general concept of providing schedule information, storing it, and querying it, and assigning presence states is well known in the art as illustrated by McDowell, who discloses providing schedule information in a presence detection method. McDowell teaches the method steps of storing and querying schedule information and assigning presence states if they are different. In paragraph P13, paragraph 0135, line 8, McDowell states, that imported items into the Privacy database include "PIM contents, (i.e. calendar...)", thereby providing a place to store and use schedule information. McDowell also discloses that his system does "presence determination" as disclosed in his abstract, line 1, and discloses that message blocking is also possible for presence detection with "calendar programs", on P13, paragraph 0129, line 12.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 1 of 10/670550 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

Regarding claim 18 of 10/670549 vs. claim 15 of 10/670550:

Claim 15 of 10/670550 discloses the computer-readable medium wherein the program instructions are further computer-executable to: detect a computer system activity level indicative of computer system activity; determine whether said activity level exceeds an activity threshold in response to said detecting; and transition a presence state of said instant messenger to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user. Claim 15 of 10/670550 discloses all the limitations of claim 18 of 10/670549 above except for claim 18 of 10/670549 includes the limitations of storing and querying schedule information and assigning changes in presence state.

The general concept of providing schedule information, storing it, and querying it, and assigning presence states is well known in the art as illustrated by McDowell, who discloses providing schedule information in a presence detection method. McDowell teaches the method steps and computer-readable medium which provides the ability of storing and querying of schedule information and assigning presence states if they are different. In paragraph P13, paragraph 0135, line 8, McDowell states, that imported

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items into the Privacy database include "PIM contents, (i.e. calendar...)", thereby providing a place to store and use schedule information. McDowell also discloses that his system does "presence determination" as disclosed in his abstract, line 1, and discloses that message blocking is also possible for presence detection with "calendar programs", on P13, paragraph 0129, line 12.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 15 of 10/670550 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

Regarding claim 28 of 10/670549 vs. claim 40 of 10/670550:

Claim 40 of 10/670550 discloses the system, wherein said instant messenger software module is further configured to: detect a computer system activity level indicative of computer system activity; determine whether said activity level exceeds an activity threshold in response to said detecting; and transition a presence state of said instant messenger software module to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user. Although the elements in the claims are presented in a different order, claim 40 of 10/670550 meets all the limitations of claim 28 of 10/670549 above except that claim 28 of 10/670549 includes the use of a calendar application software module.

The general concept of providing a calendar application software module is well known in the art as illustrated by McDowell, which discloses a schedule for availability in a presence detection method. McDowell teaches the use of a calendar application software module on P12 of the specification, Table 5, and in paragraph P13, paragraph 0135, line 8, where McDowell states, that imported items into the Privacy database include "PIM contents, (i.e. calendar...)", thereby providing a calendar application in his presence detection method and system.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify claim 40 of 10/670550 to include the limitations of storing and querying schedule information and assigning presence states in his advantageous presence detection and scheduling method as taught by McDowell in order to integrate the invention "into a functionally seamless system" as stated by McDowell in his Abstract, lines 2-3.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9, 11-18, and 21-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 1, "assigning a different presence state" does not display tangible output results to an output device, is not stored on a system, and does not

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cause the system to do work, such as sending the output to a client where a user can use it.

Regarding claim 9: claim 9 inherits the problems of claim 1, and also is performing the abstraction of "determining".

Regarding claims 2-7, these claims do not fix the abstractions of claim 1, and in addition, "transitioning said current presence state" is also performing an abstraction with no tangible output result.

Claims 11-18 are rejected similarly to claims 1-8 because "assign a different presence state" is an abstraction with no tangible output result for a user to see.

Claim 19 is rejected similarly to claim 9, because it inherits the problems of claim 11 which performs abstractions, and claim 19 also is performing the abstraction of "determining".

Claims 21-28 are also rejected similarly to the above rejected claims for the same reasons.

Claim 29 is rejected also because it inherits the problems of claim 21 and is performing the abstraction that determines.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 1, 2, 5-7, 9-12, 15-17, and 19-22, 25-27, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by McDowell et al, hereafter referred to as McDowell (US publication 2002/0035605, dated March 21, 2002).

Regarding claim 1:

McDowell discloses a method, comprising: storing schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at a given time; querying said schedule information; and if a current presence state of an instant messenger does not correspond to said activity status indicated by said schedule information, assigning a different presence state that corresponds to said activity status in response to said querying, wherein said current presence state and said different presence state each correspond to said given user. (McDowell discloses the use of schedule information in Table 5, p 12 where he discloses "Please indicate which time of day you do not wish to receive messages. Please indicate which days of the week you do". McDowell also discloses that the "Campaign Manager queries the Presence Server to know if a particular subscriber's phone is on or OFF before attempting to send a targeted mobile commercial message" on P3 of the specification, paragraph 56, lines 7-10. McDowell also discloses that the user can change their current presence state to a different presence state in addition to the schedule information in Tables 1 and 2, page 5 of the specification.)

Regarding claim 2:

McDowell discloses the method as recited in claim 1, wherein storing said schedule information corresponding to said given user comprises providing a calendar

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application. (In paragraph 0135, lines 5-8: McDowell discloses that the calendars can be imported into the Privacy Database, thereby providing it in his invention. Also a calendar application is implied because in Table 5, P12 of the specification, McDowell discloses that his "Privacy Controls" include asking the user to indicate which days of the week and time of day the user does not wish to receive messages.)

Regarding claim 5:

McDowell discloses the method as recited in claim 1, wherein assigning a different presence state comprises transitioning said current presence state to an engaged state in response to detecting a engaged activity status of said given user. (McDowell discloses in Table 1, P5 of the specification, that his method and system can detect an "engaged" state when the subscriber is in a voice call, and also discloses other presence states in Table 1, and discloses "presence determination" in his Abstract, line 1.)

Regarding claim 6:

McDowell discloses the method as recited in claim 1, wherein assigning a different presence state comprises transitioning said current presence state to an online state in response to detecting an available activity status of said given user. (Table 1, P5 of the specification also discloses an "Online-Available" state, and also discloses "presence determination" in his Abstract, line 1.)

Regarding claim 7:

McDowell discloses the method as recited in claim 1, wherein assigning a different presence state comprises transitioning said current presence state to a state

determined by said schedule information. (On P12, Table 5, McDowell discloses that a user can enter which days of the week and which times the user does not wish to receive messages. It is implied that the presence state would be transitioned to unavailable during those times.)

Regarding claim 9:

McDowell discloses the method as recited in claim 1, further comprising: receiving an instant messaging operation directed to a given user, wherein said given user is not offline; determining a presence state of said instant messenger in response to receiving said instant messaging operation; and selectively processing said instant messaging operation dependent upon said presence state in response to said determining. (McDowell discloses "the integration of presence determination, location determination, instant messaging...into a functionally seamless system". P2 of specification, paragraph 0014, lines 2-4. McDowell also discloses several presence states which are not offline in Table 1, P 5 of the specification. "The SMSC 134 can query the Presence Server 112 before attempting to send a message, eliminating inefficient retry attempts", thereby selectively processing the instant messaging operation. P4, paragraph 0053, column 2, last three lines.)

Regarding claim 10:

McDowell discloses the method as recited in claim 1, further comprising: storing an instant messaging operation associated with a given presence state of said instant messenger, wherein said given presence state corresponds to a given user; detecting a transition to said given presence state subsequent to said storing; and performing said

instant messaging operation in response to said detecting. (McDowell discloses that the Short Message Service Center can “query the Presence Server 112 before attempting to send a message, eliminating inefficient retry attempts” on P 4, paragraph 0053, last three lines, column 2. It is inherent that the message must have been stored in order to send it later.)

Regarding claim 11:

McDowell discloses a computer-accessible medium comprising program instructions, wherein the program instructions are computer-executable to: store schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at a given time; query said schedule information; and if a current presence state of an instant messenger does not correspond to said activity status indicated by said schedule information, assign a different presence state that corresponds to said activity status in response to said querying, wherein said current presence state and said different presence state each correspond to said given user. (In Figure 3, P3 of the drawings, McDowell discloses his computer-accessible media—his Presence Server, IM Server, and Campaign Manager in his PLIM system, which perform these functions. McDowell also discloses the use of schedule information in Table 5, p 12 where he discloses “Please indicate which time of day you do not wish to receive messages. Please indicate which days of the week you do”. McDowell also discloses that the “Campaign Manager queries the Presence Server to know if a particular subscriber’s phone is on or OFF before attempting to send a targeted mobile commercial message” on P3 of the specification, paragraph 56, lines

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7-10. McDowell also discloses that the user can change their current presence state to a different presence state in addition to the schedule information in Tables 1 and 2, page 5 of the specification.)

Regarding claim 12:

McDowell discloses the computer-accessible medium as recited in claim 11, wherein storing said schedule information corresponding to said given user comprises providing a calendar application. (In paragraph 0135, lines 5-8: McDowell discloses that the calendars can be imported into the Privacy Database, implying that a calendar application is provided because it allows the calendar information to be stored and used. Also a calendar application is implied because in Table 5, P12 of the specification, McDowell discloses that his "Privacy Controls" include asking the user to indicate which days of the week and time of day the user does not wish to receive messages.)

Regarding claim 15:

McDowell discloses the computer-accessible medium as recited in claim 11, wherein assigning a different presence state comprises transitioning said current presence state to an engaged state in response to detecting an engaged activity status of said given user. (McDowell discloses in Table 1, P5 of the specification, that his method and system can detect an "engaged" state when the subscriber is in a voice call, and also discloses other presence states in Table 1, and discloses "presence determination" in his Abstract, line 1.)

Regarding claim 16:

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McDowell discloses the computer-accessible medium as recited in claim 11, wherein assigning a different presence state comprises transitioning said current presence state to an online state in response to detecting an available activity status of said given user. (Table 1, P5 of the specification also discloses an "Online-Available" state, and also discloses "presence determination" in his Abstract, line 1.)

Regarding claim 17:

McDowell discloses the computer-accessible medium as recited in claim 11, wherein assigning a different presence state comprises transitioning said current presence state to a state determined by said schedule information. (On P12, Table 5, McDowell discloses that a user can enter which days of the week and which times the user does not wish to receive messages. It is implied that the presence state would be transitioned to unavailable during those times.)

Regarding claim 19:

McDowell discloses the computer-accessible medium as recited in claim 11, wherein said program instructions are further computer-executable to: receive an instant messaging operation directed to a given user, wherein said given user is not offline; determine a presence state of said instant messenger in response to receiving said instant messaging operation; and selectively process said instant messaging operation dependent upon said presence state in response to said determining. (McDowell discloses a Presence Server, IM Server, and Campaign Manager in his PLIM system for performing these functions. McDowell discloses "the integration of presence determination, location determination, instant messaging...into a functionally seamless

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system". P2 of specification, paragraph 0014, lines 2-4. McDowell also discloses several presence states which are not offline in Table 1, P 5 of the specification. "The SMSC 134 can query the Presence Server 112 before attempting to send a message, eliminating inefficient retry attempts", thereby selectively processing the instant messaging operation. P4, paragraph 0053, column 2, last three lines.)

Regarding claim 20:

McDowell discloses the computer-accessible medium as recited in claim 11, wherein said program instructions are further computer-executable to: store an instant messaging operation associated with a given presence state of said instant messenger, wherein said given presence state corresponds to a given user; detect a transition to said given presence state subsequent to said storing; and perform said instant messaging operation in response to said detecting. (McDowell discloses that the Short Message Service Center can "query the Presence Server 112 before attempting to send a message, eliminating inefficient retry attempts" on P 4, paragraph 0053, last three lines, column 2. It is inherent that the message must have been stored in order to send it later.)

Regarding claim 21:

McDowell discloses a system, comprising: a computer system; an instant messenger software module configured to execute on said computer system; and a calendar application software module configured to store schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at a given time, and further configured to respond to

queries of said schedule information from said instant messenger software module; wherein said instant messenger software module is further configured to: query said schedule information; and if a current presence state of said instant messenger software module does not correspond to said activity status indicated by said schedule information, assign a different presence state that corresponds to said activity status in response to said querying, wherein said current presence state and said different presence state each correspond to said given user. (McDowell discloses the use of schedule information in Table 5, p 12 where he discloses "Please indicate which time of day you do not wish to receive messages. Please indicate which days of the week you do". McDowell also implies that he has a calendar application software module because he stores calendar information in his Privacy database in Paragraph 0135, line 8. McDowell also discloses that the "Campaign Manager queries the Presence Server to know if a particular subscriber's phone is on or OFF before attempting to send a targeted mobile commercial message" on P3 of the specification, paragraph 56, lines 7-10. McDowell also discloses that the user can change their current presence state to a different presence state in addition to the schedule information in Tables 1 and 2, page 5 of the specification.)

Regarding claim 22:

McDowell discloses the system as recited in claim 21, wherein said calendar application software module and said instant messenger software module are integrated into a common software module. (McDowell discloses that his "Presence determination, location determination, instant messaging..." are "integrated into a

functionally seamless system.” This implies a common software module if they are integrated.

Regarding claim 25:

McDowell discloses the system as recited in claim 21, wherein assigning a different presence state comprises transitioning said current presence state to an engaged state in response to detecting an engaged activity status of said given user. (McDowell discloses in Table 1, P5 of the specification, that his method and system can detect an “engaged” state when the subscriber is in a voice call, and also discloses other presence states in Table 1, and discloses “presence determination” in his Abstract, line 1.)

Regarding claim 26:

McDowell discloses the system as recited in claim 21, wherein assigning a different presence state comprises transitioning said current presence state to an online state in response to detecting an available activity status of said given user. (Table 1, P5 of the specification also discloses an “Online-Available” state, and also discloses “presence determination” in his Abstract, line 1.)

Regarding claim 27:

McDowell discloses the system as recited in claim 21, wherein assigning a different presence state comprises transitioning said current presence state to a state determined by said schedule information. (On P12, Table 5, McDowell discloses that a user can enter which days of the week and which times the user does not wish to

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receive messages. It is implied that the presence state would be transitioned to unavailable during those times.)

Regarding claim 29:

McDowell discloses the system as recited in claim 21, wherein said instant messenger software module is further configured to: receive an instant messaging operation directed to a given user, wherein said given user is not offline; determine a presence state of said instant messenger software module in response to receiving said instant messaging operation; and selectively process said instant messaging operation dependent upon said presence state in response to said determining. (McDowell discloses "the integration of presence determination, location determination, instant messaging...into a functionally seamless system" implying instant messages are received. P2 of specification, paragraph 0014, lines 2-4. McDowell also discloses several presence states which are not offline for a given user in Table 1, P 5 of the specification. "The SMSC 134 can query the Presence Server 112 before attempting to send a message, eliminating inefficient retry attempts", thereby selectively processing the instant messaging operation. P4, paragraph 0053, column 2, last three lines.)

Regarding claim 30:

McDowell discloses the system as recited in claim 21, wherein said instant messenger software module is further configured to: store an instant messaging operation associated with a given presence state of said instant messenger software module, wherein said given presence state corresponds to a given user; detect a transition to said given presence state subsequent to said storing; and perform said

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instant messaging operation in response to said detecting. (McDowell discloses that the Short Message Service Center can "query the Presence Server 112 before attempting to send a message, eliminating inefficient retry attempts" on P 4, paragraph 0053, last three lines, column 2. It is inherent that the message must have been stored in order to send it later.)

10. Claims 1, 2, 4-5, 7-8, 11, 18, 21, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Horvitz (PCT application WO 01/69387, dated September 20, 2001).

Regarding claim 1:

Horvitz discloses a method, comprising: storing schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at a given time; querying said schedule information; and if a current presence state of an instant messenger does not correspond to said activity status indicated by said schedule information, assigning a different presence state that corresponds to said activity status in response to said querying, wherein said current presence state and said different presence state each correspond to said given user. (Horvitz's analyzer uses "data in the user's calendar" and makes observations about the user's activity, to determine states such as "busy" or "open to receiving notification", P8, lines 16-21. Horvitz uses "active polling" or querying ... "by the receipt of information", disclosing that schedules are queried. lines 2-3, P15. Horvitz also explicitly states that his system performs "scheduling queries", on line 27, P 9 of the specification)

Regarding claim 2:

Horvitz discloses the method as recited in claim 1, wherein storing said schedule information corresponding to said given user comprises providing a calendar application. (Horvitz discloses that his "context analyzer stores user profile information" and that the "notification manager can access or infer the context of the user, e.g., the user's current location...", on P 2 of the specification, lines 22-23, and lines 29-30, respectively, which would imply that a calendar application is provided to be able to tell where and when the user is located. Also Figure 8, item 152 depicts a calendar in the drawings, and by "accessing" the calendar, Horvitz is providing a calendar application, as disclosed on P23 of the specification, lines 29-30.)

Regarding claim 4:

Horvitz discloses the method as recited in claim 2, wherein querying said schedule information comprises accessing said calendar application via a uniform resource locator (URL). (Since Horvitz discloses that "Selection of Universal Resource Locator (URL) addresses provided in the display, for example, may cause access of the information referred to by these addresses, for instance.", lines 16-18, P55. Horvitz also discloses that "Such sources of information can include the user's context profile, the user's online calendar,...", lines 1-2, P3 of the specification, implying that since the calendar is online it is accessed by the URL.)

Regarding claim 5:

Horvitz discloses the method as recited in claim 1, wherein assigning a different presence state comprises transitioning said current presence state to an engaged state

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in response to detecting a engaged activity status of said given user. (Horvitz discloses that a user's "given state of attention can include whether the user is open to receiving notification, busy and not open to receiving notification, and can include other considerations such as weekdays, weekends, holidays, and/or other occasions/periods.", lines 20-22, p8 of the specification. Horvitz also discloses that "direct measurement of context indicates that sensor(s) can be employed to detect whether the user is amenable to receiving alerts..." implying that the sensors can detect an engaged state or an idle state, P21, lines 4-6).

Regarding claim 7:

Horvitz discloses the method as recited in claim 1, wherein assigning a different presence state comprises transitioning said current presence state to a state determined by said schedule information. (Horvitz discloses that his "context analyzer stores user profile information" and that the "notification manager can access or infer the context of the user, e.g., the user's current location...", on P 2 of the specification, lines 22-23, and lines 29-30, respectively, which would imply that a calendar application is provided to be able to tell where and when the user is located. Also Figure 8, item 152 depicts a calendar in the drawings, and by "accessing" the calendar, Horvitz is providing a calendar application, as disclosed on P23 of the specification, lines 29-30. Horvitz also discloses that "the context analyzer determines the current context of the user, such as the user's current location and attentional state", P3 of the specification, line 29-30, thereby implying that a user's state can transition from a current state to a state determined by the user's schedule.)

Regarding claim 8:

Horvitz discloses the method as recited in claim 1, further comprising: detecting a computer system activity level indicative of computer system activity; determining whether said activity level exceeds an activity threshold in response to said detecting; and transitioning a presence state of said instant messenger to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user. (P 20, discusses "predetermined thresholds", and "attentional focus", in order to decide "whether the user is currently amenable to receiving notification alerts." lines 15, and 1-2, respectively. P21, line 22-23 discusses that the "user should not presently be disturbed", implying a busy state, and that by "typing very quickly", that the "user is focused on a computer-related activity, and should not be unduly disturbed." P21, line 31, and P22, line 1, respectively)

Regarding claim 11:

Horvitz discloses a computer-accessible medium comprising program instructions, wherein the program instructions are computer-executable to: store schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at a given time; query said schedule information; and if a current presence state of an instant messenger does not correspond to said activity status indicated by said schedule information, assign a different presence state that corresponds to said activity status in response to said querying, wherein said current presence state and said different presence state each correspond to said given user. (The "computer programs executable by a processor of

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a computer from a machine-readable medium" are disclosed on P13, lines 21-22, and Horvitz's "context module 54 determines a user's current context" as disclosed on P13, lines 26-27. Horvitz's analyzer also uses "data in the user's calendar" and makes observations about the user's activity, to determine states such as "busy" or "open to receiving notification", P8, lines 16-21. Horvitz uses "active polling" or querying ... "by the receipt of information", disclosing that schedules are queried. lines 2-3, P15. Horvitz also explicitly states that his system performs "scheduling queries", on line 27, P 9 of the specification)

Regarding claim 18:

Horvitz discloses the computer-accessible medium as recited in claim 11, wherein said program instructions are further computer-executable to: detect a computer system activity level indicative of computer system activity; determine whether said activity level exceeds an activity threshold in response to said detecting; and transition a presence state of said instant messenger to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user. (P 20, discusses "predetermined thresholds", and "attentional focus", in order to decide "whether the user is currently amenable to receiving notification alerts." lines 15, and 1-2, respectively. P21, line 22-23 discusses that the "user should not presently be disturbed", implying a busy state, and that by "typing very quickly", that the "user is focused on a computer-related activity, and should not be unduly disturbed." P21, line 31, and P22, line 1, respectively)

Regarding claim 21:

Horvitz discloses a system, comprising: a computer system; an instant messenger software module configured to execute on said computer system; and a calendar application software module configured to store schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at a given time, and further configured to respond to queries of said schedule information from said instant messenger software module; wherein said instant messenger software module is further configured to: query said schedule information; and if a current presence state of said instant messenger software module does not correspond to said activity status indicated by said schedule information, assign a different presence state that corresponds to said activity status in response to said querying, wherein said current presence state and said different presence state each correspond to said given user. (The Abstract discloses a system, line 1, an instant messaging software module is implied since the system performs notifications through a notification manager, line 5, P12. P20 discusses "predetermined thresholds", and "attentional focus", in order to decide "whether the user is currently amenable to receiving notification alerts." lines 15, and 1-2, respectively. P21, line 22-23 discusses that the "user should not presently be disturbed", implying a busy state, and that by "typing very quickly", implying an activity threshold, that the "user is focused on a computer-related activity, and should not be unduly disturbed." P21, line 31, and P22, line 1, respectively. A calendar application software module is provided by Horvitz because he "accesses" it as disclosed on P23 of the specification, lines 29-30.)

Regarding claim 28:

Horvitz discloses the system as recited in claim 21, wherein said instant messenger software module is further configured to: detect a computer system activity level indicative of computer system activity; determine whether said activity level exceeds an activity threshold in response to said detecting; and transition a presence state of said instant messenger software module to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user. (P 20, discusses "predetermined thresholds", and "attentional focus", in order to decide "whether the user is currently amenable to receiving notification alerts." lines 15, and 1-2, respectively. P21, line 22-23 discusses that the "user should not presently be disturbed", implying a busy state, and that by "typing very quickly", that the "user is focused on a computer-related activity, and should not be unduly disturbed." P21, line 31, and P22, line 1, respectively)

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 3, 13, and 23, are rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell in view of Heinonen et al, hereinafter referred to as Heinonen (US Patent 678530, dated April 27, 2004, and filed on December 28, 1999)

Regarding claim 3:

McDowell discloses the method as recited in claim 2, wherein said calendar application is compliant with the Internet Calendaring and Scheduling Core Object Specification standard (RFC 2445). McDowell discloses all the limitations as disclosed above except for making sure his calendar application is compliant with the Internet Calendaring and Scheduling Core Object Specification standard (RFC 2445).

Heinonen teaches the use of providing a calendar application compliant with RFC 2445, or iCalendar and vCalendar, in column 2, lines 25-27. The general concept of providing an application that is compliant with RFC 2445 is well known in the art as illustrated by Heinonen which discloses both iCalendar and vCalendar in a calendar application.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify McDowell of his instant messaging system which stores schedule information in his advantageous method as taught by Heinonen in order to "store", column 1 line 12 of the specification, "receive and send calendar items by way of a SMS message", as stated in column 2, lines 24-25.)

Regarding claim 13:

McDowell discloses the computer-accessible medium as recited in claim 12, wherein said calendar application is compliant with the Internet Calendaring and

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Scheduling Core Object Specification standard (RFC 2445). McDowell discloses all the limitations as disclosed above except for making sure his calendar application is compliant with the Internet Calendaring and Scheduling Core Object Specification standard (RFC 2445).

Heinonen teaches the use of providing a calendar application compliant with RFC 2445, or iCalendar and vCalendar, in column 2, lines 25-27. The general concept of providing an application that is compliant with RFC 2445 is well known in the art as illustrated by Heinonen which discloses both iCalendar and vCalendar in a calendar application.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify McDowell of his instant messaging system which stores schedule information in his advantageous method as taught by Heinonen in order to "store", column 1 line 12 of the specification, "receive and send calendar items by way of a SMS message", as stated in column 2, lines 24-25.)

Regarding claim 23:

McDowell discloses the system as recited in claim 21, wherein said calendar application software module is compliant with the Internet Calendaring and Scheduling Core Object Specification standard (RFC 2445). McDowell discloses all the limitations as disclosed above except for making sure his calendar application is compliant with the Internet Calendaring and Scheduling Core Object Specification standard (RFC 2445).

Heinonen teaches the use of providing a calendar application compliant with RFC 2445, or iCalendar and vCalendar, in column 2, lines 25-27. The general concept

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of providing an application that is compliant with RFC 2445 is well known in the art as illustrated by Heinonen which discloses both iCalendar and vCalendar in a calendar application.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify McDowell of his instant messaging system which stores schedule information in his advantageous method as taught by Heinonen in order to "store", column 1 line 12 of the specification, "receive and send calendar items by way of a SMS message", as stated in column 2, lines 24-25.)

13. Claims 4, 14, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell in view of Coan et al, hereinafter referred to as Coan (US Patent number 7120424, dated October 10, 2006, with a filing date of March 12, 2001.)

Regarding claim 4:

McDowell discloses the method as recited in claim 2, wherein querying said schedule information comprises accessing said calendar application via a uniform resource locator (URL). McDowell discloses all the limitations as disclosed above except for accessing said calendar application via a uniform resource locator (URL).

Coan teaches the ability to access calendar information through a URL. The general concept of providing the ability to access a calendar application through a URL is well known in the art as illustrated by Coan which discloses a URL access in a calendar application.

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It would have been obvious for one of ordinary skill in the art at the time of the invention to modify McDowell of his calendar application in his advantageous method as taught by Coan in order to provide for the ability for "searching the calendar, getting information from the calendar, or putting information in the calendar" as stated by Coan in column 6, liners 11-14.

Regarding claim 14:

McDowell discloses 14. The computer-accessible medium as recited in claim 12, wherein querying said schedule information comprises accessing said calendar application via a uniform resource locator (URL). McDowell discloses all the limitations as disclosed above except for accessing said calendar application via a uniform resource locator (URL).

Coan teaches the ability to access calendar information through a URL. The general concept of providing the ability to access a calendar application through a URL is well known in the art as illustrated by Coan which discloses a URL access in a calendar application.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify McDowell of his calendar application in his advantageous method as taught by Coan in order to provide for the ability for "searching the calendar, getting information from the calendar, or putting information in the calendar" as stated by Coan in column 6, liners 11-14.

Regarding claim 24:

McDowell discloses the system as recited in claim 21, wherein said instant

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messenger software module is further configured to access said calendar application software module via a uniform resource locator (URL). McDowell discloses all the limitations as disclosed above except for accessing said calendar application via a uniform resource locator (URL).

Coan teaches the ability to access calendar information through a URL. The general concept of providing the ability to access a calendar application through a URL is well known in the art as illustrated by Coan which discloses a URL access in a calendar application.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify McDowell of his calendar application in his advantageous method as taught by Coan in order to provide for the ability for "searching the calendar, getting information from the calendar, or putting information in the calendar" as stated by Coan in column 6, liners 11-14.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan B. Naurot Ton whose telephone number is 571-270-1595. The examiner can normally be reached on M-Th 9 to 6:30 (flex sched) and alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules can be reached on 571-272-6681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JBNT
2/15/2007

FRANTZ JULES
SUPERVISORY PATENT EXAMINER

A handwritten signature in black ink, appearing to read 'Frantz Jules', is written over the printed name and title.